



NOTICE OF PUBLIC RULEMAKING HEARING

FOR AMENDMENTS TO

“Live Bird Market Rule” 8 CCR 1201-20

Notice is hereby given pursuant to § 24-4-103 C.R.S. that the Department of Agriculture will hold a public rulemaking hearing:

DATE: May 25, 2021
TIME: 12:30 pm
LOCATION: This hearing will be held via [Zoom](#)
CALL INFORMATION: 1-253-215-8782
MEETING ID: 834 3369 1059
PASSCODE: 482063

In order to maintain a proper hearing record you are encouraged to pre-register by completing this [Google form](#). If you do not have access to Google you may send your name and telephone number to Jenifer.Gurr@state.co.us. Pre-registration is not required to participate in the hearing.

The purpose of this rulemaking is to make revisions as a result of the agencies regulatory efficiency review process. These revisions update provisions of the rule related to avian influenza surveillance requirements so that those requirements align with the surveillance components outlined in USDA's National Poultry Improvement Plan (NPIP). Further, the revisions to the rule create an obligation that all live bird markets must verify the origin premises and the flock identification of birds coming into the market. Finally, the revisions to the rules require that all live bird markets obtain documentation of a flock's NPIP-certified status at the point of receipt of the birds into a market.

The statutory authority for these rules is § 35-50-105(3)(a), (c), (f), (h), (i), (j), (l) and (p), C.R.S.

Any interested party may file written comment with the Commissioner's office prior to the hearing, or present at the aforementioned hearing written data, views or arguments. Emailed comments should be sent to the hearing officer at Jenifer.Gurr@state.co.us. A copy of the proposed rule is available on the Department of Agriculture's website at www.colorado.gov/ag or may be obtained by calling 303-869-9004. The proposed rule shall be available for public inspection at the Colorado Department of Agriculture at 305 Interlocken Parkway, Broomfield, Colorado during regular business hours.



Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

COLORADO DEPARTMENT OF AGRICULTURE

Animal Health Division

8 CCR 1201-20

LIVE BIRD MARKET RULE

Part 1: Introduction

Previous outbreaks of avian influenza (AI) have been associated with considerable economic losses for producers and increased costs to consumers and state and federal government. Losses incurred are the result of increased mortality, decreased production value, depopulation of infected flocks, disposal of carcasses, cleaning and disinfection of infected premises, disease surveillance and testing, institution of quarantine measures and loss of domestic and international trade.

Historically, low pathogenic avian influenza (LPAI) viruses have repeatedly been isolated from the live bird marketing (LBM) system in the United States. Although LPAI virus infections may cause little or no expression of clinical signs of illness in poultry, infections have been proven to result in decreased production, increased mortality and spread of the disease and are of significant concern. In addition, LPAI H5 and H7 subtypes have been shown to possess the potential to mutate into high pathogenic avian influenza (HPAI) subtypes. Avian influenza virus outbreaks, if they occurred today, could cause serious harm to the Colorado commercial poultry industry.

The Colorado Department of Agriculture (CDA) is responsible for protecting the health of the state's poultry flocks and supporting an environment conducive to trade. Our global trading partners are increasingly wary of importing products from countries with avian influenza virus disease outbreaks. Such trade concerns, along with the risk of disease transmission posed by the virus circulating in the LBM system, have increased the need to prevent and control avian influenza outbreaks in the LBM system.

In order to protect Colorado poultry from avian influenza and prevent interruptions in trade, State and industry officials must cooperate to actively prevent and control LPAI or HPAI. In addition, some cases of human infections of HPAI have occurred in other countries in recent years. Therefore, human health would also benefit from a program that prevents the development of HPAI infections through the control of LPAI infections.

Premises and individual flock identification will be important to the success of this rule; therefore, the USDA Animal Disease Traceability Rule will be an aid in the administration of this rule.

The following goals of this rule apply to all participants in the LBM system, including the suppliers, dealers, haulers, auction markets, wholesalers, and live bird markets. The Colorado Live Bird Market System Program (LBMSP) recognizes three basic components of the LBM system: production units, distribution units, and LBMs.

The three primary goals of the Live Bird Market System Program are to:

1. Diagnose, control, and prevent avian influenza.
2. Help participants to improve biosecurity, sanitation, and disease control in their operations.
3. Minimize the effects of AI outbreaks on the Colorado commercial poultry industry.

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

Part 2 Definitions

- 2.1. “Accredited Veterinarian” means an individual who is currently licensed and in good standing with a veterinary licensing board or agency in any state of the United States or the District of Columbia to practice veterinary medicine and is accredited by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services.
- 2.2. “Agar gel immunodiffusion (AGID) test” means the official serological test for AI in which precipitates are formed by a combination of nonspecific AI antigens and antibodies that diffuse through a gel. A positive reaction indicates exposure to AI virus, but does not indicate a specific subtype. Samples positive by AGID must be further tested and subtyped using the hemagglutination inhibition test. A final decision on the status of an AGID-positive flock should be based on further sampling and testing for the presence of virus through RRT-PCR or virus isolation.
- 2.3. “AI” means avian influenza.
- 2.4. “Animal health official” means an employee of or person under the direct supervision of the Colorado Department of Agriculture (CDA), Colorado State University (CSU) or USDA who has authority to carry out Live Bird Market System Program activities.
- 2.5. “Animal and Plant Health Inspection Service (APHIS)” means the agency in the United States Department of Agriculture known as the Animal and Plant Health Inspection Service.
- 2.6. “Approved laboratory” means a State, Federal, university, or private laboratory that has been approved by USDA, APHIS, Veterinary Services (~~(NPIP or NAHLN)~~(VS)), to perform one or more any or all official ~~Live Bird Market System Program AI~~ tests for the program~~AI diagnosis~~.
- 2.7. “Area Veterinarian in Charge (AVIC)” means the veterinary official of APHIS, VS, assigned by the Administrator to supervise and perform the official animal health programs of APHIS in the State or States concerned.
- 2.8. “Auction market” means a location where producers, dealers, wholesalers, and retailers meet to purchase, trade, or sell live birds.
- 2.9. “~~NPIP Certified Flock~~Avian Influenza Approved Flock or Premises” means a flock or premises that complies with the required components of the National Poultry Improvement Program, including participating in avian influenza H5/H7 surveillance program developed by an Official State Agency, and that has a valid NPIP participation number~~avian influenza individual bird testing or flock monitoring, as outlined in this rule.~~
- 2.10. “CDA” means the Colorado Department of Agriculture.
- 2.11. “Certified poultry technician (CPT)” means an individual who has been specially trained in poultry health monitoring and specimen collection by the State, and who is included on an official list of technicians certified by the State to perform inspections and specimen collections.
- 2.12. “Cleaning and disinfection (C&D)” means the methods used to destroy or eliminate AI on the premises. This requires thorough removal of organic material and debris, followed by treatment with the proper concentration of an agent effective in inactivation of AI virus.
- 2.13. “Commingled flock” means poultry from multiple sources that has been assembled into one or more groups.

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

- 2.14. "Commission" means the Colorado Agricultural Commission.
- 2.15. "Commissioner" means the Commissioner of ~~the Colorado Department of Agriculture, or the Commissioner's designee.~~
- 2.16. "Distribution system" means businesses (such as wholesalers, dealers, haulers, and auction markets) engaged in the transportation and/or sale of poultry to LBMs. These are the links between production flocks and LBMs.
- 2.17. "Distributor" means any of the businesses or an individual working within the distribution system serving the LBMs.
- 2.18. "Enzyme-linked immunosorbent assay (ELISA)" means a type-specific serological screening test to determine exposure to AI virus.
- ~~2.19. "Established flock" means poultry of the same species held together on one premises for at least 21 days or, at the discretion of the State Veterinarian, any group of poultry on one premises that has been segregated from another group for at least 21 consecutive days.~~
- ~~2.20. "H5, H7 LPAI" means low pathogenic H5 and H7 subtypes of AI virus.~~
- 2.1921. "Hauler/trucker" means a business or individual that transports poultry from producer premises to another supplier premises, to another distributor, or to an LBM.
- 2.202. "High pathogenicity avian influenza (HPAI) virus" means any influenza virus that kills at least 75 percent of 4- to 6-week-old susceptible chickens within 10 days following intravenous inoculation of 0.2 ml of a 1:10 dilution of infectious allantoic fluid; or any H5 or H7 influenza virus that has an amino acid sequence at the hemagglutination cleavage site compatible with HPAI; or any influenza virus that is not an H5 or H7 subtype and that kills one to five chickens and grows in cell culture in the absence of trypsin.
- 2.213. "Hold order" means a temporary order issued by the state veterinarian when an infectious or contagious disease is suspected in livestock to isolate any specific livestock, premises, county, district, or section of the state; restrict the movement of livestock; and specify sanitary measures, pending completion of testing.
- 2.224. "Infected premises" means a premises that houses a flock(s) that has been confirmed to be positive for AI virus, subtype H5 or H7, by an approved laboratory using an official test.
- 2.235. "Live bird market (LBM)" means any facility that gathers live poultry to be slaughtered and sold onsite.
- 2.246. "Live Bird Market System Program (LBMSPP)" means the any CDA program-operated system that ~~to control~~s and ~~reduces~~ outbreaks of avian influenza ~~virus~~ in all components of the live bird markets system.
- 2.257. "Live bird marketing system (LBM system)" means the LBM system that includes LBMs and their production and distribution systems.
- 2.268. "Live haul" means a process and the personnel and equipment used in that process, in which live poultry are transported from one location to another.

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

- 2.279. "Lot" means a grouping of birds within a flock from a premises that arrive together at a market at one specific time point.
- 2.2830. "Low pathogenic avian influenza (LPAI) virus" means all influenza A viruses of H5 and H7 subtypes that are not high pathogenicity avian influenza viruses~~any AI virus that does not meet the criteria for HPAI.~~
- 2.2934. "National Veterinary Services Laboratories (NVSL)" means the USDA, APHIS, National Veterinary Services Laboratories, which is the national diagnostic reference laboratory for AI.
- 2.302. "Positive flock" means a flock that has been confirmed to be positive for AI virus, subtype H5 or H7, by an official test performed at an approved laboratory. Specimens that are found to be positive by the AGID test must be tested by the hemagglutination-inhibition (HI) test and neuraminidase-inhibition (NI) test at the NVSL. The final determination of the status of an AI seropositive flock will be based on epidemiological data and additional serological and virological (rRT-PCR and virus isolation) testing.
- 2.313. "Poultry" means any species of domestic fowl (including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds) raised for food production or other purposes.
- 2.324. "Poultry dealers" means individuals in businesses or the businesses themselves concerned with trading birds in the LBM system, acquiring birds from multiple flocks and geographic areas for resale, or movement of live poultry between the production system and LBMs.
- 2.335. "Poultry waste" includes dead birds, feathers, offal, and poultry litter.
- 2.346. "Premises identification number" means a nationally unique number assigned by a state, tribal, or Federal animal health authority to a premises that is, in the judgment of the state, tribal, or Federal animal health authority, a geographically distinct location from other premises. The premises identification number is associated with an address, geospatial coordinates, or location descriptors that provide a verifiably unique location. The premises identification number may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. It may also be used as a component of a group or lot identification number.
- 2.357. "Production or supplier flock" means the production facility or farm that is the origin of poultry offered for sale in an LBM.
- ~~2.38. "Qualified bird" means an AI-negative bird from a production unit with a unique premises identification number assigned by the State of origin. This bird will maintain its qualified status when only registered distributors are used between the production unit and the LBM. To maintain its qualified status, it also must not have been commingled with untested birds.~~
- 2.369. "Quarantine" means an order issued by the Commissioner of Agriculture ~~or his designee~~ when testing has confirmed the presence of an infectious or contagious disease in livestock, which order isolates specific livestock, premises, counties, districts, or sections of the state; restricts the movement of livestock; and specifies sanitary measures.
- 2.3740. "Real-time reverse-transcriptase polymerase chain reaction (RRT-PCR)" means an official test to detect the RNA of AI virus.
- 2.3841. "Registration" means the process by which an LBM provides to CDA the information required by these rules to register with the state as an LBM in the state.

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

~~2.42. "Test certificate" means a certificate issued by a State agency based on negative AI test results from an approved laboratory. The certificate bears the unique premises number, test results, and other pertinent information.~~

~~2.3943.~~ "USDA" means the United States Department of Agriculture

~~2.404.~~ "Veterinary Services (VS)" means the division of APHIS charged with animal health activities within the United States.

~~2.415.~~ "Wholesaler" means a business with a facility that buys birds from producers, distributors, or auction markets, and then trades or resells them.

Part 3 Standards for Live Bird Markets

3.1. Live Bird Markets

3.1.1. Registration and education

3.1.1.1. A LBM must be registered with the CDA and must comply with the requirements of the LBMSP. A unique premises identification number will be assigned by the CDA . Information required for an LBM to become registered are as follows:

3.1.1.1.1. Business name, address, and telephone number;

3.1.1.1.2. Owner's name, address, and telephone number;

3.1.1.1.3. Hours of operation;

3.1.1.1.4. Global Positioning System location;

3.1.1.1.5. Market capacity (number of birds held at the marketing location);

3.1.1.1.6. Other LBM facilities under the same ownership, including dealerships, bird transportation businesses, and commercial poultry operations; and

3.1.1.1.7. A list of all avian species marketed.

3.1.1.2. As a LBMSP participant, the LBM must allow LBMSP inspectors and personnel access to the facility and the birds in the facility during normal business hours for inspection and sample collection and for examination of market records.

3.1.1.3. LBM owners or managers are responsible for having knowledge of all rules and regulations of the LBMSP and are required to provide the training necessary to accomplish the execution of this rule.

3.1.1.4. All personnel that work in the market must be trained in biosecurity procedures as arranged by the owner/manager. Certificates of training will be maintained in personnel files.

3.1.2. Bird testing and recordkeeping

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

- 3.1.2.1. Markets shall be responsible for verifying origin premises and flock identification and obtaining documentation of ~~NPIP certified status test-negative status~~ of the flock at the time of receipt of the birds. If records are not available, the birds shall not enter the market.
- 3.1.2.2. All birds entering the market will originate only from ~~AI approved~~NPIP certified flocks and premises.
- 3.1.2.3. Records for avian species shall include the date of entry, the premises-of-origin identification number with lot identifier, the number and species of birds in the lot, the distributor registration number and the date of sale.
- 3.1.2.4. All records shall be maintained for a minimum of 12 months from date of entry of the bird(s)/flock into the market.
- 3.1.3. Market sanitation and biosecurity
 - 3.1.3.1. A biosecurity protocol shall be developed by the LBM and approved by the LBMSPP. Employees shall be required to follow biosecurity protocols. Biosecurity protocols shall include, but not be limited to, the following minimum requirements:
 - 3.1.3.1.1. Transfer of the birds from shipping crates/cages into the market shall take place in a designated transfer area/room at the periphery of the facility. This transfer area shall be cleaned and disinfected in between deliveries.
 - 3.1.3.1.2. Distributors or persons delivering live birds to the market shall deliver birds into the designated transfer area/room but shall not enter into the retail area of the market
 - 3.1.3.1.3. All market personnel entering the designated transfer area/room shall walk through a disinfectant foot bath/pad using an approved disinfectant.
 - 3.1.3.1.4. Crates/cages and other transport supplies shall not enter the retail market area.
 - 3.1.3.1.5. Market crates and cages shall be constructed of plastic or metal. Wood crates and cages shall not be used to house birds in the market.
 - 3.1.3.1.6. Protocols shall provide detailed information on market cleaning and disinfection procedures.
 - 3.1.3.1.7. All sanitation and biosecurity protocols shall be in written form and be made available to all live bird market employees and upon request to LBMSPP personnel.
 - 3.1.3.2. LBM environments and crates shall be kept in clean and sanitary conditions at all times, as defined by the biosecurity protocol.
 - 3.1.3.3. Once delivered to a LBM, birds shall be killed and processed before leaving the facility.

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

- 3.1.3.4. LBMs are required to undergo regular, periodic closures with depopulation and complete sanitation, cleaning and disinfection (C&D), and downtime. The closures should occur at least quarterly with a minimum of 24 hours of downtime. Closures shall be scheduled with the LBMSPP at least two weeks prior to the event. The market must be inspected and approved by LBMSPP personnel before being allowed to reopen.
- 3.1.3.5. Poultry waste must be contained in a manner approved by an animal health official to prevent disease transmission while it is awaiting disposal by a method acceptable to the jurisdiction where the market is located.
- 3.1.3.6. Birds from production units shall not be sold directly to LBMs unless the LBM owner or manager is also registered as a distributor, with the necessary LBMSPP approval for protocols and equipment to ensure effective C&D of conveyances and equipment.
- 3.1.3.7. Other end-stage poultry markets that are not “slaughter-only” markets will require development and approval of special biosecurity safeguards and inspections to assure that they meet LBMSPP Standards and are successful in the prevention and control of AI.
- 3.1.4. Market surveillance
 - 3.1.4.1. LBMs and birds housed within the market may be tested for avian influenza virus by the LBMSPP at any time, but they shall be tested as determined by the LBMSPP personnel or at least quarterly.
 - 3.1.4.2. Specimens collected for testing may include swab samples collected from live birds or the environment within the LBM; swabs collected on arrival from birds, conveyances, and crates; blood samples from birds; and swabs or tissues from sick and dead birds detected in the LBM.
 - 3.1.4.3. LBMs shall notify LBMSPP personnel of any increases in illness or mortality within 48 hours.
- 3.1.5. Market positives
 - 3.1.5.1. LBMs that test positive for avian influenza virus on RRT-PCR or virus isolation at an approved laboratory will undergo mandatory market closure by the LBMSPP. Premises that have positive results for avian influenza shall be managed under the direction of the State Veterinarian or USDA. ~~Markets will be required to depopulate and perform C&D. No additional birds will be allowed to enter the LBM following the notification of positive status.~~
 - 3.1.5.2. The decision to reopen the LBM will be agreed upon by CDA and USDA and only after all necessary biosecurity, cleaning and disinfection, surveillance, fallow period, and all other necessary requirements are completed. Before the LBM can reopen for business, it must pass inspection by LBMSPP personnel. Environmental samples will be taken for testing at this time. If results of that testing are positive, the LBM will perform additional C&D procedures within the next 24 hours, followed by subsequent inspection and retesting. No facility will reopen until environmental samples test negative.

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

~~3.1.5.3. When birds are found to be positive in the LBM or upon delivery into the market, an investigation will be initiated. This may require use of market records in order to conduct appropriate tracebacks to determine where the positives are occurring in the system.~~

3.2. Poultry Distributors

3.2.1. Registration and education

3.2.1.1. Poultry distributors (consisting of dealers, haulers, the live haul process, auction markets, and wholesalers) must be registered ~~with the LBMSP in each state in which they conduct business. This includes the states from which birds are acquired, as well as the states that have LBMs to which the birds are sold or delivered.~~ The distributor's business premises will be given a premises one unique identification number in the state in which it is located. This identification number will be used when the distributor registers in other states. Information required for a distributor's registration license includes:

3.2.1.1.1. Business name, address, and telephone number;

3.2.1.1.2. Owner's name, address, and telephone number;

3.2.1.1.3. Hours of operation;

3.2.1.1.4. Global Positioning System location of premises or residence;

3.2.1.1.5. Bird capacity;

3.2.1.1.6. Other businesses under the same ownership in the LBM system, including other dealerships, bird transportation businesses, and commercial poultry operations; and

3.2.1.1.7. A list of all avian and nonavian species distributed.

3.2.1.2. To register as a bird transporter within the LBM system, distributors must agree to allow LBMSP personnel and/or Federal animal health officials to have access to records upon request and to permit official inspections and testing of premises and equipment as required.

3.2.1.3. Registration will not be issued until there has been an inspection and approval of the facility, its record system, and the C&D equipment that will be used.

3.2.1.4. All personnel that work for the company must be trained in biosecurity ~~by state or federal personnel or by a trained company representative.~~ Records Certification of employee training must be maintained in the personnel files. ~~This training protocol is to be developed and funded by USDA with input from State Veterinarians in participating states.~~

3.2.2. Bird testing and recordkeeping

3.2.2.1. Distributors may only accept properly identified and properly documented ~~qualified~~ birds from NPIP participating flocks accompanied by an NPIP movement form 9-3 ~~test-negative flocks.~~

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

~~3.2.2.2. Distributors must provide documentation and certification of negative test results with each delivery of birds.~~

3.2.2.~~23~~. Distributors must comply with recordkeeping requirements. They must maintain records for 12 months of bird pickups and deliveries that include: NPIP 9-3 movement forms~~copies of test certification~~, dates of pickup and delivery, locations, species, numbers of birds, and farm premises identification numbers that include lot identification. In addition, distributors must keep records of C&D of premises and/or conveyances.

3.2.2.~~34~~. Any indication noted by a distributor that paperwork has been altered or that it misrepresents the sources or test status of birds coming into the LBM must be reported to the State Veterinarian or ~~their~~his designee.

3.2.3. Distributor sanitation and biosecurity

3.2.3.1. Distributor vehicles, bird-holding devices, and any premises where birds may be held must be clean and sanitary at all times.

3.2.3.2. Documented biosecurity protocols, developed by the distributor and approved by the state, must be in place.

3.2.3.3. Distributors must use state-approved all-season crate and conveyance washing equipment and present C&D documentation when obtaining birds from producers and from other distributors. Once emptied of birds, conveyances and coops must undergo C&D between all deliveries.

3.2.3.4. Before the distributor returns to a farm after visiting an LBM, all cages, vehicles, and other equipment must undergo C&D.

3.2.3.5. Distributors may not transport live birds or other live animals from LBMs.

3.2.4. Distributor surveillance

3.2.4.1. Distributors will be subjected to random inspections by state or federal officials of the state in which they are located. These random inspections will be done to ensure that conveyances, crates, and facilities are clean and sanitary and that records are being kept according to LBMS requirements.

3.2.4.2. Distributors will be tested at least quarterly for LPAI virus. Testing may include facility environment, conveyances, crates, and birds, if present.

3.2.4.3. Specimens of choice and the types of tests to be run for each are covered in Part 3.1.4.2. of this document.

3.2.5. AI-positive distribution units

3.2.5.1. Premises that have positive results for avian influenza shall be managed under the direction of the State Veterinarian or USDA~~Distributors' facilities that test positive by RRT-PCR or virus isolation at an approved laboratory will undergo depopulation of any birds on the premises, followed by C&D.~~

~~3.2.5.2. Environmental samples may be taken for testing if indicated.~~

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

~~3.2.5.3. Any specimen testing positive at an approved laboratory will be submitted to the NVSL for virus isolation and further characterization of the virus. However, premises will be depopulated on the basis of the original positive RRT-PCR or virus isolation results and will not await the results of testing at the NVSL.~~

~~3.2.5.4. A distributor that fails biosecurity inspections or is positive on quarterly testing will have to undergo monthly inspections and testing until there have been 3 consecutive months of negative testing, at which time quarterly testing will resume.~~

~~3.2.5.5. When birds are found to be positive within the distribution system, an investigation will be initiated. This may require use of distributor records in order to complete traceouts to determine where the positives occurred in the LBM system. State and Federal animal health officials and, if necessary, compliance personnel will work together with LBM personnel in the investigation.~~

3.3. Production Units

3.3.1. Registration and education

3.3.1.1. Production units ~~must~~shall be registered and must obtain a ~~unique~~ premises identification numbers to be used for all business pertaining to the LBMs. Information required for the records include:

3.3.1.1.1. Business name, address, and telephone number;

3.3.1.1.2. Owner's name, address, and telephone number;

3.3.1.1.3. Global Positioning System location;

3.3.1.1.4. Premises capacity; and

3.3.1.1.5. Other bird and animal production or sales facilities, as well as dealerships and bird transportation operation, under the same ownership.

3.3.1.1.6. A list of all avian and non-avian species produced.

3.3.1.2. To participate in the LBMS, production units shall allow LBMS personnel to have access to all records and equipment for inspections when requested. Testing may be conducted as indicated by the LBMS.

3.3.2. Bird testing and recordkeeping

3.3.2.1. All ~~production units must be NPIP certified flocks, birds provided to a distributor or directly to the LBM shall originate from an avian influenza monitored and approved premises and shall bear or be accompanied by identification to a premises of origin. The categories of production units and the testing requirements for each category are as follows:~~

~~3.3.2.1.1. AI Monitored Flock: To be certified as an AI Monitored Flock, a flock must meet the following requirements:~~

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

- ~~3.3.2.1.1.1. — The group must have been together without any additions from nontested or non-monitored flocks for a minimum of 21 days before testing and no birds may be added between the testing date and the date they leave the farm.~~
- ~~3.3.2.1.1.2. — Samples from 30 birds, 3 weeks of age and older from all pens and houses on the premises, shall be collected between 21 and 30 days after the previous collection.~~
- ~~3.3.2.1.1.3. — The 30 birds selected for testing shall be selected randomly and shall be representative of the flock (birds of testing age tested from all pens and houses on the premises).~~
- ~~3.3.2.1.1.4. — The first test should be conducted within 30 days of placement except for the following:~~
- ~~3.3.2.1.1.4.1. — For serology, blood collection from silkies and other small breeds of chickens may be delayed until the birds are 6 to 8 weeks of age.~~
- ~~3.3.2.1.1.4.2. — For serology, blood collection from guineas, chukars, and quail may be delayed until the birds are 5 to 6 weeks of age.~~
- ~~3.3.2.1.1.4.3. — Eggs may be substituted for blood samples from quail and chukars after they start laying.~~
- ~~3.3.2.1.1.5. — A flock must test negative for AI for 3 consecutive months before it is considered a monitored flock in good standing. When new birds are added to the premises, birds coming from a source of equal or higher status (for example, another monitored flock) assume the monitored flock status of the previous flock and must be tested once together as a monitored flock before moving into the LBMS. Chicks coming directly from an NPIP AI Clean hatchery must be tested once as part of a monitored flock before moving into the LBMS. If the added birds are from other sources, not equal to or of higher status, the flock must be tested for 3 months consecutively (with negative results) to be considered a monitored flock in good standing.~~
- ~~3.3.2.1.1.6. — To re-qualify for monitored flock status after any breaks in the required monthly testing, 30 birds must be tested by an NVSL-approved test protocol within 10 days before the date of movement into the LBMS.~~
- ~~3.3.2.1.2. — Tested flock: A flock that has been established for a minimum of 21 days with no contact with other birds and no birds added to the flock during this time, and from which 30 birds are randomly sampled and tested negative for AI according to the specific requirements listed below, within 10 days before the date of movement into the LBMS. No poultry may be added to or have contact with this flock after testing and before movement. If the flock contains fewer than 30 birds, all birds within the flock must be tested.~~
- ~~3.3.2.1.2.1. — Samples from 30 birds, 3 weeks of age and older, from all pens and houses on the premises shall be collected. Eggs may be substituted for blood samples from quail and chukars after they start laying.~~
- ~~3.3.2.1.2.2. — The 30 birds for testing shall be selected randomly and shall be representative of the flock.~~

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

~~3.3.2.1.2.3. — Flock test records, as well as records of bird transfers, must be maintained and made readily available for inspection for 12 months by the bird owner, manager, or program participant as approved by the animal health agency.~~

~~3.3.2.1.2.4. — Birds loaded for transport to a distributor must be identified by premises of origin and must contain an appropriate date of movement or lot number that will distinguish this shipment from others. This information must be recorded on the test certificate or other paperwork if a test certificate is not required for movement to the distributor.~~

~~3.3.2.1.2.5. — Seropositive flocks must be quarantined and tested using an approved virus-detection procedure at the NVSL.~~

~~3.3.2.1.2.6. — Premises that have results confirmed as positive for H5 or H7 LPAI virus must depopulate and undergo cleaning and disinfection.~~

~~3.3.2.2. Samples for testing may be collected by LBMSPP personnel.~~

3.3.2.23. ~~Flock test records, as well as records of bird transfers, shall be maintained for 12 months.~~ Birds loaded for transportation to a distributor shall be identified by premises of origin and shall contain an appropriate date or lot number that will distinguish this shipment from others. This information shall be recorded on NPIP 9-3 movement form~~the test certificate~~ that will be provided to the distributor or LBM. These records must be maintained for 12 months.

3.3.2.34. Birds from production units shall not be sold directly to LBMs unless the flock owner or manager is also registered as a distributor, with the necessary LBMSPP approval for protocols and equipment to ensure effective C&D of conveyances and equipment.

~~3.3.2.5. Premises with birds that test positive at an approved laboratory will be held according to CDA authority while results are being confirmed.~~

~~3.3.2.6. Seropositive flocks must be quarantined and tested using an approved virus-detection procedure at the NVSL.~~

~~3.3.2.7. Premises that have results confirmed as positive for H5 or H7 LPAI virus must depopulate and undergo cleaning and disinfection.~~

~~3.3.2.8. Premises that have results confirmed as positive for non-H5/H7 LPAI shall be managed under the discretion of the State Veterinarian.~~

3.3.3. Sanitation and biosecurity

3.3.3.1. Production unit facilities, conveyances, bird holding devices, and other equipment shall be clean and sanitary at all times.

3.3.3.2. Biosecurity protocols shall be developed by the producer and be in place in all production units on the premises.

3.3.3.3. Records~~Certification~~ of employee training shall be maintained in the company personnel files.

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

3.3.3.4. Producers shall have approved equipment available for C&D of premises, conveyances, and crates. They shall maintain records of C&D.

3.3.4. Producer surveillance

3.3.4.1. Premises may be subjected to random inspections by LBMS personnel to ensure that premises, conveyances, and coops are clean and sanitary. Random samples may be collected for avian influenza surveillance~~virus identification~~ from birds or environment at the time of inspection.

3.3.4.2. Records will be reviewed during site inspections.

3.3.5. Avian influenza ~~LPAI~~-positive production facilities

3.3.5.1. Premises that have positive results for avian influenza shall be managed under the direction of the State Veterinarian or USDA~~Any specimens positive for virus shall be submitted to the NVSL for virus isolation and characterization. The premises will remain under a hold order to restrict poultry movements until results are obtained from the NVSL.~~

~~3.3.5.2. Premises confirmed positive for H5 or H7 shall remain under quarantine, which stops poultry movements, and be inventoried. Records will be examined, and all traceouts will be conducted. The premises will be depopulated and will undergo C&D.~~

~~3.3.5.3. RRT-PCR or VI positives at LBMs and distribution facilities shall result in tracebacks to a supplier of origin by CDA or Federal personnel.~~

Parts 4-6 Reserved

Part 7: Statements of Basis, Specific Statutory Authority and Purpose

7.1. Adopted: August 30, 2006 – Effective October 30, 2006

The statutory basis for this rule is §§35-50-101 et.seq., C.R.S. 2005 and specifically, §§ 35-50-105 (3)(h), C.R.S., 2005., powers and duties of the Commissioner.

The basis of this rule lies in the importance of maintaining the health of the poultry industry in Colorado, specifically, protecting the industry from the economic consequences of an outbreak of avian influenza (AI). Avian influenza can take two forms, a milder version referred to as “low pathogenic avian influenza” (LPAI). LPAI typically causes little or no clinical illness in poultry but results in decreased production and increased mortality. Additionally, LPAI H5 and H7 subtypes have been shown to possess the potential to mutate into the more ravaging version, referred to as “high pathogenic avian influenza” (HPAI). Historically, live bird markets have been proven to harbor LPAI.

The purpose of this rule is to identify necessary sanitary standards for live bird markets and to establish a surveillance and testing protocol that the live bird market system, including suppliers, dealers, haulers, auction markets, wholesalers, and live bird markets, must follow. The three primary goals of this rule include: (1) diagnose, control and prevent avian influenza; (2) help participants improve biosecurity, sanitation and disease control in their operations; and (3) minimize the effects of AI outbreaks on the Colorado commercial poultry industry.

7.2. Adopted November 9, 2016 – Effective December 30, 2016

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

Statutory Authority

This rule is amended and adopted pursuant to the Commissioner's authorities found at § 35-50-105, C.R.S., specifically, § 35-50-105(3)(a), (c), (f), (h), (i), (j), (l), and (p), C.R.S.

Purpose of changes to the rule

The purpose of this rule-making is to update matters related to the identification, control, and sanitation related to avian influenza, both low pathogenic and highly pathogenic influenzas, in bird production units, bird distribution units, and live bird markets within Colorado.

Factual and Policy Issues

Throughout the rule, the reviewers updated language to bring it into conformity with national disease prevention terms, definitions, and standards. Concepts related to "premises identification" are updated to conform to the national standard. As well, more precise information related to avian influenza is added to provide clarity for users of the rule.

In areas where terms that are identified and defined within the organic act, § 35-50-101, et seq., the reviewers ensured consistency of terms used in the statute and in the rule.

Additionally, the reviewers found it necessary to provide greater clarity with regard to bird testing and record-keeping of production facilities. The rule now provides the standards necessary in a clearer manner for a production facility and its "AI Monitored Flocks" and "Tested Flocks."

Finally, the reviewers modified the registration system because the previous rule had included a system that created a registration that extended beyond the bounds of the Commissioner's authority with regard to registration, denial of registration, and a hearing process for that registration and possible denial of registration. This rule still requires registration, but the registration that this rule provides is one by which a covered entity registers with the Commissioner and is subject to the enforcement authorities of the statute without creating additional hearing options or additional enforcement authorities.

Specific Purpose of this Rulemaking

The reviewers made grammatical and syntactic changes to Part 1, including removing acronyms where more specific language would clarify the intent and updating the term "National Animal Identification System" to its current name, the "USDA Animal Disease Traceability Rule."

Within Part 2, the definitions section, the reviewers changed "Accredited Veterinarian" and "Cleaning and disinfection" to make these definitions consistent with other rules for livestock disease adopted by the Commissioner. "Hold order" and "Quarantine" are changed to be consistent with how those terms are used within the rule's enabling act. The reviewers also updated definitions related to avian influenza and flocks associated with avian influenza to add precision and clarity. Finally, the reviewers changed "registration" to comport with the authority the Commissioner has to require registration.

Changes to Part 3 include changes regarding waste and updated biosecurity measures for live bird markets. Additionally, the reviewers expanded Part 3.3 to clarify the bird testing and record-keeping required for production units. The reviewers provide this change to enhance testing protocols and qualifying standards for the industry to distinguish a "monitored flock" from a "tested flock." This change also permits the reviewers to remove the "established flock" category, simplifying the distinctions.

The reviewers removed Part 4 because the rule's enabling act contains this language. There is no need to repeat it in rule.

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

The reviewers removed Part 5 because there is no authority for the Commissioner to deny or grant registration. Rather, the Commissioner's authority extends to disease control and record-keeping of those facilities that are registered with the Commissioner.

Similarly, the reviewers removed Part 6 because the rule's enabling act contains the authority for civil penalties for violations of the rule or of the enabling act. There is no need to repeat it in the rule.

The reviewers have re-numbered the rule to contemplate the removed sections and to bring uniformity within the rule to its numbering convention.

7.3. Adopted June 9, 2021 – Effective July 30, 2021

Statutory Authority

These rules are amended and adopted pursuant to the Commissioner's authorities found at § 35-50-105, C.R.S., specifically, § 35-50-105(3)(a), (c), (f), (h), (i), (j), (l), and (p), C.R.S.

Purpose

The purpose of this rulemaking is to make revisions as a result of the agencies regulatory efficiency review process. These revisions update provisions of the rule related to avian influenza surveillance requirements so that those requirements align with the surveillance components outlined in USDA's National Poultry Improvement Plan (NPIP). Further, the revisions to the rule create an obligation that all live bird markets must verify the origin premises and the flock identification of birds coming into the market. Finally, the revisions to the rules require that all live bird markets obtain documentation of a flock's NPIP-certified status at the point of receipt of the birds into a market.

Factual and Policy Issues

The NPIP is a cooperative plan developed jointly by the poultry industry, state animal health officials, and the United States Department of Agriculture to promote the health of poultry nationwide. The NPIP incorporates a variety of disease testing programs and biosecurity guidelines to prevent and control the spread of poultry disease. The NPIP also establishes standards for official tests and diagnostic protocols, including avian influenza.

The previous requirements for avian influenza surveillance in this rule were onerous and were difficult to monitor and enforce. The most effective method for avian influenza surveillance is to require a producer's participation in the NPIP, as confirmed by the live bird markets at the time of receipt of any birds from a flock into the live bird market. This practice also ensures low-risk movement of flocks within the live bird market system. To harmonize the rules with this surveillance approach, the Department has revised specific definitions and requirements as outlined in more detail below.

Specific Changes

The Department has revised the following terms in Part 2: "Approved laboratory," "Avian Influenza Approved Flock or Premises," "Live Bird Market System Program (LBMSPP)," and "Low pathogenic avian influenza (LPAI)." The Department's revisions to "Approved Laboratory" and "Low pathogenic avian influenza (LPAI)" are intended to harmonize definitions used in these rules with updated language from the USDA. The revisions to "Live Bird Market System Program (LBMSPP)" are to clarify the program definition under this rule. The change of definition from "Avian Influenza Approved Flock or Premises" to "NPIP certified flock" is to harmonize the definition in this rule to that in NPIP. The Department further amended the definition of "Commissioner" so that it is consistent with the definition used in the Livestock Health Act at section 35-50-103(3), C.R.S. In addition, the Department deleted the terms "Established

Editing comments: Changes to this rule are indicated in ~~strike~~through for removal and underline for additions. If you are able to view this document in color the changes are also indicated in red. Changes as a result of the rulemaking hearing are indicated in blue.

flock,” “H5, H7 LPAI,” “Qualified bird,” and “Test certificate” because these terms have either become obsolete or are not used in the rules.

The Department amended Part 3.1.2 to require that those markets obtain documentation to evidence that imported birds originate from an NPIP-certified flock and premises. This requirement ensures that the Department has adequate surveillance for avian influenza through the NPIP program, as well as animal disease traceability, both of which will help to mitigate the risk of avian influenza within the live bird market system in Colorado.

The Department also amended Parts 3.1.5, 3.2.5, and 3.3.5 to remove rigid responses to live bird markets, distributors, or production facilities that experience a positive avian influenza incident. The purpose of this change is to permit the State Veterinarian to craft incident-specific responses to positive facilities.

Parts 3.2 and 3.3 were modified to clarify registration requirements for distributors and production facilities. Specifically, these changes remove onerous diagnostic testing requirements and instead require NPIP participation of flocks within the live bird market system. The change aligns avian influenza surveillance requirements, recordkeeping, and movement requirements in these rules with those of the NPIP program, which will provide better overall standardized surveillance and animal disease traceability for all entities within the live bird market system to mitigate the risk and impact of avian influenza.

All other proposed changes to the rules are to correct non-substantive typographical, grammatical, and formatting errors and to update numerical references for accuracy.